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PAUL G. SUMMERS

ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207
NASHVILLE, TN 37202

ANDY D. BENNETT

CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES

ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MICHAEL E. MOORE

SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

December 8, 2005

Director Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-00505

RE: Generic Docket for the Purpose of Examining TRA Rules, Policies
and Procedures in Light of Current Trends in the Gas Industries,
TRA Docket No. 05-00046

Dear Director Tate:

The Consumer Advocate appreciates your efforts and the work of the Tennessee Regulatory ("TRA" or "Authority") Staff with respect to TRA Docket No. 04-00546. However, many of the concerns expressed by the Consumer Advocate early in this proceeding about the ambiguous procedural posture of this docket remain. Consequently, the Consumer Advocate respectfully offers these comments for the Authority's consideration.

The report filed December 2, 2005, bears out a troubling trend in the regulatory environment present in Tennessee. Long standing safeguards for protecting the public interest are under siege. Of primary concern is the movement toward restricting the consumer's voice before the TRA.

Many of the issues addressed in the present docket are better suited for a contested case review. A case in point is the industry proposal to implement a pipeline replacement tracker. Yet the recommended approach to this issue suggests that the TRA Staff and industry members meet (without the participation of the Consumer Advocate) to discuss the matter prior to the TRA Staff making recommendations to the directors of the TRA.

This is especially troubling given the rejection of the pipeline replacement tracker so recently by this Authority. In presenting such a proposal in its last rate case, one of the three major gas utilities (Chattanooga Gas Company) commented that such a mechanism was needed.

In a contested case review the TRA correctly held that it was not needed.¹ The filings by the Consumer Advocate in that docket clearly demonstrate that such a tracker does not lead to increased accountability nor less involvement by the TRA Staff. In fact, the opposite is true.²

Just as importantly, it is clear that a second major utility (Atmos Energy) does not need another “single issue” rate adjustment mechanism to raise rates from consumers. The Consumer Advocate’s most recent review of Atmos shows that it is already overcharging consumers by at least \$10 million per year. Since the Consumer Advocate filed its first petition requesting that the TRA investigate the overearnings situation on October 15, 2004,³ Atmos has made at least \$11.3 million in excessive earnings. Since the Consumer Advocate filed its second petition requesting that the TRA investigate the matter on September 16, 2005,⁴ Atmos has made at least \$2.2 million in excessive earnings. Atmos has enjoyed these exorbitant returns over the very same period in which pipeline replacement should have taken place. In fact, the returns for Atmos were extremely high for the last part of this period: 9.7% in 2000, 20.7% in 2001, 20.3% in 2002, 18.2% in 2003, 14.2% in 2004 and projected 17% in 2005.⁵ To give Atmos another rate hike would allow Atmos to increase over recovery of its costs.

The third major utility (Nashville Gas Company) has completed the replacement of cast iron and bare steel pipes. Ironically, if a “tracker” were approved to recognize the “single issue” of the costs of replacement assets, Nashville Gas Company would have to reduce its rates each year. If it is deemed fair to have a “tracker” to charge consumers higher rates to recover the costs related to the increased investment associated with replacing the old pipes and services, surely it is fair for such a mechanism to track the declining costs related to the reduced investment after such a program is completed. Nashville Gas Company’s rate base and property taxes are now decreasing. The rate base (and associated property taxes) are decreasing because the additional accumulated depreciation (that is being recovered from ratepayers) causes an ever greater reduction to rate base each year.

¹ TRA Docket No. 04-00034

² All the gas utilities knew that pipe replacement was an issue in 1990. However, only Nashville Gas Company has addressed it. In contrast, after years of refusing to replace pipe as a regular cost of being allowed monopoly status Chattanooga Gas Company proposes in this docket to charge consumers with the expense. The Consumer Advocate has squarely addressed the idea of a tracker for pipe replacement in TRA Docket No. 04-00034.

³ TRA Docket No. 04-00356.

⁴ TRA Docket No. 05-00258

⁵ See, TRA Docket No. 05-00258.

The Consumer Advocate requests that the TRA carefully consider the proposed approach set forth above. The interests of consumers should not be summarily discounted from the calculus. Moreover, it is counterintuitive to reward the two (2) companies that have refused for the last 15 years to implement a successful program to replace the subject pipe and deal negatively with the one (1) company that has shown the initiative to provide a safe system for its customers.

Also troubling are industry recommendations that seek to allow it additional access to the trier of fact in contested case matters. The idea of having the parties submit proposed orders may, at first blush, be appealing. However, the concept has troubling implications. Contested case matters do not need supplementation by the parties. Each side has an ample opportunity to state its case. Should a party wish to challenge the TRA's decision(s) there is an existing procedure for seeking reconsideration of the TRA's decisions. Indiscriminately allowing parties to supplement the record leads to delay and potentially cuts off a party's ability to cross examine.⁶ The proposed approach gives the gas utility the opportunity for interaction with the TRA directors or staff in order that it might supplant the expertise of the TRA with its own agenda. At the very least such a proposal would potentially lead to exposure of the staff's recommendations. This has been something the TRA has traditionally resisted.⁷

Certainly, the Consumer Advocate understands the reasoning behind the TRA's decision then and the court of appeals support of that decision. The chilling effect of the proposed change on the TRA Staff's work is obvious. What Chattanooga Gas Company envisions is a move toward a process like that in Georgia exposing the trier of fact to pressure outside the hearing room. This approach might be marginally sufficient for the gas customers in Georgia, but Tennesseans deserve better. Such an effort should be rejected, because it is contrary to the framework established by the General Assembly.⁸ The TRA should reject this type of entanglement with the party litigants appearing before it.

Moreover, any move toward exposing staff recommendations as envisioned by Chattanooga Gas Company should be retroactively applied. The Consumer Advocate has patiently followed the decision in the case law. However, it would be unfair for the gas utility's to be able to cross examine staff now over their internal recommendations when the Consumer

⁶ In practice, this course is likely to lead to a second round of hearings. Subsequently, the TRA would issue an order which might trigger a third round of hearings related to the petition to reconsider.

⁷ *Consumer Advocate Division v Tennessee Regulatory Authority*, 1998 WL 684536, *2 (Tenn.Ct.App.).

⁸ Tenn. Code Ann. § 4-5-304.

Advocate requested the same but was denied previously.

The Consumer Advocate is interested in the TRA reviewing the industry's pricing practices regarding natural gas as suggested in Chattanooga Gas Company's letter of September 30, 2005. However, the Consumer Advocate's interest is not as limited in scope as that of Chattanooga Gas Company. Further, this docket is not the proper procedure for pursuit of this review. This is a circumstance where the amount consumers are charged for their gas service is at issue. A contested case is necessary.

Consumers can bear only so much. The last few years have brought about a turn in gas utility regulation. Now, clearly only the painful components of the price of gas service are flowed directly to consumers. Through a series of single issue dockets, gas customers have been handed more and more of the risk involved with running a utility and therefore bear a higher burden of the cost. These matters are outlined in our recent filing requesting the TRA to review the excessive rates charged by Atmos. The petition is found in TRA Docket No. 05-00258.

It is not correct to suggest that the cost of gas is simply passed on to consumers. Because the gas utilities do not believe that prudent practices are an obligation owed to customers the TRA allows the utility to take a cut out of what has loosely been labeled "savings" generated from making purchases below a predefined benchmark. In theory, the incentive for profit supplants the utility's prudence requirement. A part of the gas cost passed on to consumers this winter will be a surcharge added by the utility because the company has bought gas at a price below a market benchmark. The utility takes a portion of the difference between the market benchmark price and the actual cost of the gas. For instance in an intentionally simplistic example, if the pertinent benchmark is \$10 dollars, but the purchase is made at \$8 dollars the utility is allowed to take away a portion of the \$2 dollars as "savings" from its customers. Depending on the specific incentive plan the customer would pay by way of example \$9 dollars for gas that the utility purchased for only \$8 dollars. Consequently, it is wrong for anyone to argue that the utilities are just passing along the cost of gas.

The result - the consumer pays a higher price for gas as a commodity because the company does not pass on the lower price to the consumer. These specific incentive plans themselves lead to additional concerns over potential abuse as reflected in the proceedings in the TRA Docket Nos. 01-00704 and 02-00850. The problem is even more significant when you consider the question of what the TRA, the Consumer Advocate and the public actually know about the opaque transactions between a gas utility and its affiliates.

If we are going to provide relief for consumers, it must be done with a comprehensive view toward attacking the real problems. Chattanooga Gas Company brings up the idea of addressing in this docket the high cost of gas. The Consumer Advocate asserts that any meaningful review would take a broad approach, including a review of incentive plans and

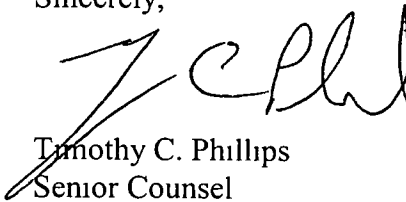
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transparency issues with respect to transactions involving gas purchases. It is also important to note that many of the issues addressed in the present docket are better suited and are contemplated by the legislature for a contested case review. The Consumer Advocate suggests the following:

- 1) That the TRA suspend all payments to the public utilities resulting from the operation of incentive base rate making mechanisms;⁹
- 2) That the TRA open company specific contested cases for the purpose of reviewing all incentive based rate making plans now in effect for gas utilities;
- 3) That the TRA direct the TRA staff to conduct a full audit of all gas utility transactions bearing in any manner on the price utility customers pay for the price of natural gas;
- 4) That the TRA establish rules and regulations to ensure that gas utilities and their affiliates file reports with the TRA on a quarterly basis containing sufficient information which provides a transparent view of the gas utilities transactions bearing in any manner on the price utility customers pay for the price of natural gas; and
- 5) That the TRA review the progress of the TRA Staff's assessment of the success or failure of the changes made in TRA Docket No. 03-00209.

Thank you for considering these suggestions.

Sincerely,



Timothy C. Phillips
Senior Counsel
615.741 8700

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⁹ Alternatively, the TRA could terminate the programs. This would allow for the "cost of gas" to be simply passed on to consumers as provided in the TRA's PGA rule